IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 7019 of 2005

Between:

Pramod Agarwal S/o.Manikal Agarwal,
Sole Proprietor of Agaarwal Founderis, R/o.2-1-113, Tobacco Bazar, Secunderabad.

..... PETITIONER

AND

The Commissioner, Quthballapur Municipality, Ranga Reddy, District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ in the nature of a writ of Mandamus or any other appropriate writ, direction order or orders declaring action of the respondent is seizing the Kawasaki Boxer Motor cycle Regd. No.A.P.10, A.B. 9309 of the petitioner under warrant of distress dated 25-3-2005 for the alleged dues of the Municipal Taxes as illegal, without jurisdiction and void and pass such other and further orders as this Hon'ble court deem fit and proper in the circumstances of the case.

Counsel for the Petitioner : MR. M.P.CHANDRAMOULI

Counsel for the Respondent : MR.POLISETTI RADHAKRISHNA (SC FOR MPL)

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.7019 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the action of the respondent Municipality in seizing the vehicle (Motor Cycle bearing Regn.No.AP.10-AB 9309 under the Warrant of Distress, dated 25-03-2005 for the alleged dues of the municipal taxes as arbitrary and illegal.

The petitioner claims to be the Proprietor of Agarwal Founderies located at Sy.No.66, Pet Basheerabad, Qutbullapur Mandal, R.R. District. It is stated that the petitioner has been paying the property tax regularly as per the demand notices issued by the respondent Municipality. However, the respondent Municipality seized the vehicle in question on 25-3-2005 under a distress warrant issued under Rule 31(c) of the A.P. Municipalities Act, 1965 (for short, 'the Act') stating that unless Rs.76,446/- towards the alleged arrears of property tax is paid the vehicle will be

sold on 2-4-2005. Aggrieved by the said action, this writ petition is filed contending that before executing the said warrant no demand was served on the petitioner with regard to the alleged arrears of tax. The petitioner also disputed the demand of Rs.76,446/- and claimed that he never committed any default in payment of property tax.

On behalf of the respondent Municipality, a detailed counter-affidavit has been filed stating that the petitioner is liable to pay a sum of Rs.76,446/- towards the property tax. The property tax on the petitioner's premises was revised due to general revision on all the properties in the Municipality with effect from 1-4-2002 and the special notice dated 26-3-2002 was issued to the above property as required under Taxation and Finance Rules under Schedule-II of the A.P. Municipalities Act, 1965. It is alleged that since the security personnel of the petitioner unit were not allowing the concerned Bill Collector and Revenue Inspector to enter into the premises for serving the notices, the said notices were pasted on the premises of the petitioner's building under a panchanama. However, the petitioner has not chosen to pay the property tax in time. Hence, the distress warrant as required under Rule 30 of the Rules was issued on 25-03-2005. However, the petitioner refused to pay the amount. As such, the Warrant Officer has executed the warrant and seized the vehicle in question under the inventory form and notice dated 25-3-2005 informing the petitioner that unless the amount due is paid within seven days the seized vehicle will be sold on 2-4-2005. All other allegations made by the petitioner are incorrect and without any basis and the distress notice was rightly issued and the same was executed by seizing the vehicle in question since the petitioner has not paid the property tax since four years.

I have heard the learned Counsel for both the parties and perused the material on record.

In view of what has been stated in the counter-affidavit, I am unable to find fault with the action of the respondents in seizing the vehicle in question. As per Rules-30 & 31 of the Rules made under Schedule-II to the Act, if the amount due on account of any tax is not paid within 15 days from the service of the notice, the Commissioner

may recover by Distraint under his warrant and sale of the movable property of the defaulter. Hence, the impugned action is well within the competence of the respondents and in accordance with the statutory provisions and therefore the declaration as prayed for cannot be granted.

If the petitioner has any grievance about the assessment made by the respondent, it is open to him to work out the appropriate remedy as available under the law. It is not necessary for this Court to express any opinion on the said issue.

However, having regard to the facts and circumstances of the case, I deem it appropriate to direct the release of the seized vehicle subject to certain conditions.

Accordingly, while leaving it open to the petitioner to work out the appropriate remedy for redressal of his grievance, if any, with regard to the impugned assessment, the Writ Petition is disposed of with a direction to the respondents to release the vehicle in question on payment of Rs.40,000/- and on furnishing immovable property security for the balance of Rs.36,446/- towards demand under the distress notice. If the petitioner does not comply with the above condition within a period of four weeks from today, it is open to the respondent to take the necessary action in accordance with law on the basis of the impugned distress notice dated 25-3-2005.

However, it is made clear that the payment made and the security furnished by the petitioner in compliance with the above direction shall be without prejudice to the rights of the petitioner to seek Revision of the assessed amount as demanded under the impugned notice.

The Writ Petition is accordingly disposed of. No costs.

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29th April, 2005.

Note:- CC in 2 days.

(B/O)

gbs

To

1. The Commissioner, Quthballapur Municipality, Ranga Reddy, District.
2. Two CD copies.